

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 04-015

MIKE WHEAT, JON TESTER,)
and KEN HANSEN,)
Plaintiffs and Respondents,)

v.) O R D E R

BOB BROWN, in his official capacity)
as Secretary of State of the State of Montana,)
Defendant and Appellant.)

On January 6, 2004, Appellant Bob Brown, Secretary of State for the State of Montana, moved this Court to expedite this appeal for the reason that the appeal presents an issue as to whether the Legislature's assignment of "holdover" Senators will be implemented or whether the Montana Districting and Apportionment Commission assignments will control. Since candidates for the ten Senate Districts in question can file for office beginning January 26, 2004, and must file by the statutorily imposed deadline in March of 2004, the issue is of immediate concern. Counsel for Respondents, Mike Wheat, Jon Tester and Ken Hansen, did not object to the motion to expedite.

Accordingly, on January 7, 2004, this Court issued an order expediting the briefing in this matter such that all briefing was to be completed by close of business on January 20, 2004. It was further ordered that the Court would render a decision—with opinion to follow—no later than February 3, 2004.

Having reviewed and considered the briefs of the parties and the decision of the First Judicial District Court,

IT IS HEREBY ORDERED:

1. The December 18, 2003, order of the First Judicial District Court in Lewis and Clark County Cause No. BDV-2003-601 is hereby affirmed.
2. An opinion from this Court will be issued at a later date, at which time the period for petitions for rehearing will begin to run.
3. The Clerk is directed to mail copies hereof to counsel of record for the respective parties.

DATED this 27th day of January, 2004.

/S/ KARLA M. GRAY /S/ W. WILLIAM LEAPHART /S/ JAMES C. NELSON
/S/ JOHN WARNER /S/ JIM REGNIER /S/ PATRICIA O. COTTER /S/ JIM RICE

Justice Jim Rice specially concurring.

I concur. Although the legal rationale for the Court's decision to affirm the District Court will be set forth at a later time, brief comment is appropriately made today.

The force majeure behind the initiation of this action, evident from judicial notice we may take of the parties' public statements, is the charge that the Reapportionment and Redistricting Commission engaged in openly biased decisionmaking in order to promote the success of one political party, and the demise of another. Although this case does not directly address the equity of the Commission's actions, we should not be surprised that such alleged disenfranchisement would prompt legal action. As such, this case well illustrates the intentions of the constitutional convention delegates in this regard, and this Court's role therein.

The constitutional delegates sought to remove the influence of partisan politics from the reapportionment process. They created the Reapportionment Commission with faith that it would not allow the redistricting process to be captured by political interests, but, rather, would serve the citizen:

[P]art of our proposal includes a reapportionment commission which would be made up, as proposed, of nonlegislative members and we would ask you and the citizens of Montana to have faith in those people that they would not exercise the gerrymandering that could be possible

Const. Conv. Tr., Vol. III, p. 559 (Delegate Cate). Whether the current Reapportionment Commission has betrayed the faith placed in it by the constitutional delegates is an issue which is not directly before us today. However, we should nonetheless be mindful of the trust placed in the commission by the delegates, and the potential for abuse of that trust. If called upon, this Court has the constitutional duty of appointing the chairman of the commission. If and when that would again occur, we should well remember the intention of the delegates, and ensure that the person selected is fair, impartial and committed to the citizen—not to the promotion of a particular political party.

/S/ JIM RICE